

BOARD OF APPEALS CASE NO. 5183

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BEFORE THE

APPLICANT: Christina Finkle

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct a detached
single-family dwelling within the required setbacks;
1512 Old Joppa Road, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

HEARING DATE: November 1, 2001

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Aegis: 9/26/01 & 10/3/01

Record: 9/28/01 & 10/5/01

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Christina Marie Taylor Finkle is requesting a variance, pursuant to Section 267-36B, Table IV and 267-23A(2) of the Harford County Code, to allow a detached single family dwelling with less than the required 70 foot, (40 foot front yard setback plus 30 foot distance measured from the center line of the road, 50 foot proposed) in an R1 District.

The subject parcel is located at 1512 Old Joppa Road, Joppa, Maryland 21085, in the First Election District, and is more particularly identified on Tax Map 64, Grid 2F, Parcel 31. The parcel contains approximately .58 acres.

Mr. William Monk, a duly qualified land planning and zoning consultant, and a principal with the firm of Morris & Richie appeared and testified that he had reviewed the application, staff report and attachments, and the Harford County Zoning Code, and that he was familiar with the subject property.

Mr. Monk stated that in his opinion the subject property is unique because of the property outline, configuration and topography. The frontage varies from 110 feet on the south side of the property to 140 feet on the north. In addition, the topography of the lot drops significantly from south to north. The south end of the parcel is over 6 feet above road level, while the north end is below the road. The witness also testified that the property is significantly shallower in depth than other properties in the area because of the 110 foot depth on the south side of the lot.

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The witness testified that he had prepared Applicant's Exhibit 10, which is a GIS drawing of the property with the required setback lines superimposed thereon. This Exhibit shows that if all required setbacks were observed, the lot would have a very small pie shaped building envelope. According to the witness, this would create a practical difficulty for the Applicant, not only because of the limited building area, but also because of the constraints caused by the necessary placement of the septic system to the rear of the dwelling. Mr. Monk then testified that, in his opinion, the granting of the requested variance will not cause any detriment to adjoining property owners because there will be no encroachment into the 50 foot setback from the adjoining rear parcel.

The Applicant, Christina Marie Taylor Finkle appeared, and testified that she is the owner of the subject property, which has been in her family for over 40 years. Ms. Finkle described her property as a 2 acre lot, currently improved by a shed, an above-ground swimming pool, newly planted trees, and a foundation for a new dwelling. The prior dwelling was demolished, pursuant to a demolition permit, before the new foundation was constructed. The property is serviced by public water, and a private septic system.

The witness stated that she proposes to build a 32 foot by 40 foot single family home, with a basement, and an attached garage. A building permit was issued on March 29, 2001 for construction of the dwelling. Once the permit was issued, the Applicant's contractor began work, installing the current foundation. After the foundation was completed, the Applicant received a zoning violation notice, and a stop work order, stating that the foundation was located too close to Old Joppa Road. Ms. Finkle testified that due to the configuration of the lot and the existing topography there is no other way to locate the proposed dwelling on her property.

Finally, Ms. Finkle testified that she does not believe that the requested variance would have any adverse impact on any adjoining properties. She introduced Applicant's Exhibits 8A through 8D, which consist of letters from adjoining property owners. All of the letters state that the individuals signing have no objection to the granting of the requested variance. The witness also introduced Applicant's Exhibit No 9, which is a letter from the Jefferey M. Stratmeyer, P.E., Chief Engineer with the Harford County Government.

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Mr. Stratmeyer indicates that his department had reviewed the probable future conditions of Old Joppa Road, and that no widening of the road is planned in the foreseeable future. He also explains that, even if Old Joppa Road were eventually widened, this would have no significant impact on the Applicant's proposed residence.

The Department of Planning and Zoning recommended approval of the subject request in its Staff Report dated July 30, 2001, stating that:

“The Department finds that the subject property is unique. The property contains a very limited building envelope. Given the topography of the lots, the location of the proposed dwelling should not have an adverse impact on Old Joppa Road.”

No witnesses appeared in opposition to the requested variance.

The Applicant, Christina Marie Taylor Finkle, is requesting a variance pursuant to Section 267-36B, Table IV and 267-23A(2) of the Harford County Code to allow a detached single family dwelling with less than the required 70 foot, (40 foot front yard setback plus 30 foot distance measured from the center line of the road, 50 foot proposed) in an R1 District.

Old Joppa Road does not have an established right-of-way line. Section 267-26C(4) of the Harford County Code provides that “[f]or the purpose of establishing a setback line on existing roads without established right-of-way lines, the setback shall be measured thirty (30) feet from the centerline.” Section 267-36B, Table IV, of the Harford County Code Design Requirements for Specific Uses in an R1 Urban residential District provides for a minimum 40-foot front yard depth.

The Harford County Code allows the granting of variances stating:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Maryland Court of Special Appeals established the following two part test for determining whether a variance should be granted. First, it must be determined whether the property for which the variance is being requested is unique. In order for a lot to be unique, there must be a peculiar characteristic or unusual circumstance, relating only to the subject parcel, which causes the zoning ordinance to impact more severely on that property than on surrounding lots. If it is determined that the subject property is unique, the hearing examiner may proceed to the second prong of the test. The second prong involves determining whether strict enforcement of the zoning ordinance would result in practical difficulty or unreasonable hardship to the owner of the unique property. Cromwell v. Ward, 102 Md. App. 691, 721 (1995).

The Hearing Examiner finds that the subject property is unique. The property is a shallow lot with sloping topography, and a very limited building envelope. There was no opposition testimony introduced to contradict any of these findings. Thus, the first element of the Cromwell test has been met.

It must next be decided whether denial of the requested variance would create practical difficulty, or an unreasonable hardship for the Applicant. The Hearing Officer finds that such a denial would result in both practical difficulty and unreasonable hardship for the Applicant in this case. The proposed location is the only practical place on the subject property where a single family detached dwelling can be located. In addition, the Applicant would suffer a real, and unreasonable hardship if she were required to remove the newly constructed foundation.

Lastly, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to, adjacent properties, nor will it materially impair the purpose of the Code or the public interest. The property is bordered by woods on the north, Old Joppa Road on the east, and residential uses to the west and south. The Applicant introduced letters from the adjoining residential property owners stating that they had no objection to the granting of the requested variance.

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The proposed dwelling will not encroach into the required setback lines of the property to the rear of the subject lot, and no widening of Old Joppa Road is planned within the foreseeable future.

The Hearing Examiner recommends approval of the Applicant=s request subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed dwelling.
2. That the Applicant not encroach further into the required setback than the distance requested herein.

Date: NOVEMBER 30, 2001

Rebecca A. Bryant
Zoning Hearing Examiner

